

Message Text

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ORIGIN EUR-08

INFO OCT-01 ISO-00 H-03 SS-07 NSC-06 NSCE-00 /025 R

DRAFTED BY EUR:DO - GBCHRISTIANSON

APPROVED BY S/S:0 - MR. HOGANSON

EUR/EE - MR. DUNLOP

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O R 241517Z AUG 75

FM SECSTATE WASHDC

TO AMEMBASSY BELGRADE IMMEDIATE

INFO AMCONSUL BARCELONA

UNCLAS STATE 201539

E.O. 11652: N/A

TAGS: OREP (CODEL ALBERT)

SUBJECT: LEGAL SITUATION: ILA BOYCOTT

FOR CONGRESSMAN THOMAS FOLEY, HOTEL LIBERTAS, DUBROVNIK,
FROM WERNER BRANDT

FOLLOWING IS BRIEF ANALYSIS RE LEGAL SITUATION ILA BOYCOTT
PREPARED BY BOB BOR.

BEGIN TEXT: LEGAL ISSUES INVOLVED IN GRAIN SHIP BOYCOTTS
BY ILA

CURRENT LITIGATION ARISING FROM REFUSAL OF TEXAS LONG-
SHOREMEN TO LOAD GRAIN BOUND FOR RUSSIA WAS INSTITUTED BY
WEST GULF MARITIME ASSOCIATION. THEIR ATTORNEYS HAVE OB-
TAINED TRO ORDERING ILA BYCK TO WORCHEDULED TRAIN IN PS D-
ARE SEEKING TO COVER A THIRD SHIP SCHEDULED TO BEGIN LOAD-
ING TODAY,AUGUST 15.BASIC COMPLAINT IS THAT WORK STOPPAGE
WAS A DIRECT VIOLATION OF CONTRACT'S NO-STRIKE CLAUSE AND
SHOULD HAVE BEEN SUBMITTED TO ARBITRATION AS REQUIRED BY
CONTRACT. ILA CLAIMS THAT DISPUTE WAS NOT IN VIOLATION OF
CONTRACT BECAUSE ACTION WAS NOT TAKEN AGAINST CONTRACT PAR-
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TY (EMPLOYERS) BUT WAS A DISPUTE WITH FEDERAL GOVERNMENT

OVER FAILURE TO PROTECT US CONSUMERS FROM POSSIBLE INFLATIONARY EFFECTS OF GRAIN SALES TO RUSSIA. ISSUES ARE STICKY AND HEADED FOR APPEALS COURT REGARDLESS OF WHO WINS IN LOWER COURT UNLESS RESOLVED ON A POLITICAL BASIS. ILA RELIES ON A FOURTH CIRCUIT DECISION (NLRB VS. ILA, 1964) UPSETTING A NLRB HOLDING THAT ILA'S REFUSAL TO REFER MEMBERS FOR WORK ON A BRITISH VESSEL BECAUSE IT HAD ENGAGED IN TRADE WITH CUBA WAS AN UNFAIR LABOR PRACTICE.

THE COURT HELD THAT THE UNION'S CONDUCT CONSTITUTED A PURELY POLITICAL DECISION, THAT IT WAS NOT SEEKING TO ALTER TERMS AND CONDITIONS OF EMPLOYMENT, AND THAT THE MATTER DID NOT COME WITHIN THE BOARD'S JURISDICTION. THE MARITIME ASSOCIATION IS APPARENTLY RELYING ON A 1970 SUPREME COURT CASE (BOYS MARKET V. RETAIL CLERKS UNION, 398 U.S. 235) WHICH HELD THAT UNDER CERTAIN CIRCUMSTANCES A FEDERAL DISTRICT COURT MAY ENJOIN A STRIKE WHICH IS IN BREACH OF A NO-STRIKE CLAUSE IN A COLLECTIVE BARGAINING AGREEMENT IF THE AGREEMENT CONTAINS A PROCEDURE PROVIDING FOR BINDING ARBITRATION OF GRIEVANCE AND THE PROCEDURE IS ENFORCEABLE IN COURT UNDER THE NLRA.

THUS FAR, NO CHARGES HAVE BEEN FILED WITH NLRB ASSERTING THAT ACTION WAS AN UNFAIR LABOR PRACTICE IN VIOLATION OF NLRA.

IF THEY WERE TO BE FILED, ULTIMATE DISPOSITION BY BOARD IS IN QUESTION. NLRA DEFINES UNFAIR LABOR PRACTICE TO INCLUDE INDUCING OR ENCOURAGING AN INDIVIDUAL EMPLOYED BY A PERSON ENGAGED IN COMMERCE TO ENGAGE IN A REFUSAL IN THE COURSE OF HIS EMPLOYMENT TO HANDLE COMMODITIES OR TO THREATEN, COERCE, OR RESTRAIN ANY PERSON ENGAGED IN COMMERCE OR IN AN INDUSTRY AFFECTING COMMERCE IF THE OBJECT OF SUCH CONDUCT IS AMONG OTHER THINGS TO FORCE OR REQUIRE A PERSON "TO CEASE DOING BUSINESS WITH ANY OTHER PERSON."

IF A COMPLAINT WERE REGISTERED, THE ISSUE IS IN DOUBT BECAUSE OF THE FOURTH CIRCUIT DECISION REFERRED TO ABOVE. ALSO THERE IS THE QUESTION OF WHETHER THE USSR IS A "PERSON" WITHIN THE MEANING OF THE PROVISIONS IN THE NLRA THAT UNCLASSIFIED

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IS ADDRESSED TO ACTION WHICH WOULD FORCE A PERSON TO CEASE DOING BUSINESS WITH ANY OTHER "PERSON."

OTHER STATUTES THAT HAVE BEEN DISCUSSED BY SOME AS POSSIBLY APPLICABLE TO THE CURRENT DISPUTE ARE THE TAFT-HARTLEY ACT AND ANTI-TRUST LAWS. THE TAFT-HARTLEY ACT APPLIES TO STRIKES AFFECTING AN ENTIRE INDUSTRY OR A SUBSTANTIAL PART THEREOF THAT IMPERIL THE NATIONAL HEALTH OR SAFETY. THE

ACT PROVIDES FOR PROCEDURES TO RESOLVE THE DISPUTE THROUGH
A BOARD OF INQUIRY AND FOR AN 80-DAY INJUNCTION. IT HAS
NEVER BEEN USED IN STRIKES ADDRESSED SOLELY TO FOREIGN

POLICY OR POLITICAL ISSUES. FURTHER, IT WOULD BE DIFFICULT
TO ESTABLISH THAT THE STRIKE IMPERILS THE NATIONAL HEALTH
OR SAFETY.

IT IS POSSIBLE THAT A COURT MIGHT CONSIDER THAT A STRIKE
INVOLVING PURELY POLITICAL ACTION AND NOT RELATED TO TERMS
AND CONDITIONS OF EMPLOYMENT IS COMPREHENDED WITHIN THE
ANTI-TRUST LAWS. THERE ARE NO RECENT CASES ON THIS ISSUE.

LABOR UNIONS ARE GENERALLY EXEMPT FROM THE ANTI-TRUST LAWS,
BUT THE COURTS MIGHT HOLD THAT THE EXEMPTION DOES NOT APPLY
TO THIS KIND OF ACTIVITY. IN 1919, THE SECOND CIRCUIT HELD
THAT A CONSPIRACY UNDERTAKEN TO RESTRAIN EXPORT OF MUNI-
TIONS TO EUROPE BY FOMENTING STRIKES IN MUNITIONS FACTORIES
VIOLATED SECTION 1 OF THE SHERMAN ACT. THIS ISSUE IS NOT
INVOLVED IN THE LITIGATION NOW BEFORE THE COURTS IN THE
GULF. END TEXT

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 24 AUG 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE201539
Document Source: CORE
Document Unique ID: 00
Drafter: GBCHRISTIANSON
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750293-0173
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750822/aaaaatdx.tel
Line Count: 138
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: hartledg
Review Comment: n/a
Review Content Flags:
Review Date: 05 FEB 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <05 FEB 2003 by ReddocGW>; APPROVED <27 JAN 2004 by hartledg>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: LEGAL SITUATION: ILA BOYCOTT FOR CONGRESSMAN THOMAS FOLEY, HOTEL LIBERTAS, DUBROVNIK
TAGS: OREP, (ALBERT, CARL)
To: BELGRADE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006